(30,460)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 495

GEORGINE ISELIN, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS.

INDEX

	Original	Print
Record from Court of Claims	1	1
History of proceedings	1	1
Amended petition	1	1
Exhibit A—Certificate of incorporation	9	5
Exhibit B—Agreement between Metropolitan Opera and Real Estate Company and Conried Metropolitan Opera Co., April 3, 1908	11	7
Exhibit C—Agreement between Metropolitan Opera and Real Estate Co. and stockholders et al., March 7, 1893	34	21
Exhibit D—Agreement between Metropolitan Opera and Real Estate Co. and stockholders et al., February 15, 1916	40	25
General traverse	44	26
Argument and submission of case	44	26
Findings of fact	45	27
Conclusion of law	49	31
Opinion, Hay, J	49	31
Judgment	53	34
Plaintiff's application for appeal	53	35
Order of court allowing said application	53	35
Clerk's certificate	54	35

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. B-96

GEORGINE ISELIN

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On May 10, 1922, the plaintiff filed her original petition.

On July 10, 1922, a general traverse was entered under Rule 34.

Subsequently, to wit, on April 20, 1923, by leave of court, the plaintiff filed an amended petition. Said amended petition is as follows:

II. AMENDED PETITION AND EXHIBITS—Filed April 20, 1923

To the Honorable the Court of Claims:

The claimant in the above entitled cause respectfully represents:

1. That at all times material to this action the claimant was and now is the owner of three hundred shares of the capital stock of Metropolitan Opera and Real Estate Company (hereinafter referred to as the Metropolitan Company), a corporation organized under the laws of the state of New York and having its principal office at No. 150 West 40th Street, borough of Manhattan, city of New York, county of New York and state of New York.

[fol. 2] 2. That the objects of the Metropolitan Company are stated in its certificate of incorporation, a copy of which is hereto annexed and made a part hereof and marked Exhibit A.

3. That at all times material to this action the Metropolitan Company owned and now owns the premises known as the Metropolitan Opera House in the block bounded by Broadway, Seventh Avenue, Thirty-Ninth and Fortieth Streets, in the borough of Manhattan, city of New York.

4. That in and by a certain lease and agreement, dated April 3, 1908, a copy of which is hereto annexed and made a part hereof and marked Exhibit B, and which is still in full force and effect, the Metropolitan Company leased the said Opera House and other property to the Conried Metropolitan Opera Company, the name of which was later changed to Metropolitan Opera Company (hereinafter referred to as the Opera Company), a corporation organized under the laws of the state of New York. That under the terms of said lease and agreement, the Opera Company agreed to reserve for

the use of the Metropolitan Company or such persons as it might designate, at every representation of Grand Opera given during the term of said lease, all of the boxes situated on the parterre tier of the said Opera House; and Opera Company further agreed that "Six free admissions shall be allowed for each of the parterre boxes reserved as aforesaid." That under the terms of said lease and agreement, the Opera Company, in consideration of the letting of the property referred to in said lease and agreement, covenanted to pay the Metropolitan Company a yearly rent or sum of $67,000. That under the terms of said lease and agreement, and as a condition thereof, the Opera Company covenanted to give a season of not less than sixty and not more than seventy regular representations of grand opera [fol. 3] at the said Opera House in each year of the term of said lease. That under the terms of said lease and agreement, the Metropolitan Company covenanted and agreed to pay to the Opera Company as a subsidy the sum of $1,000 for each of the regular performances of grand opera to be given as provided therein. That during all the times material to this action such subsidy amounted to $70,000 for each season, which was duly paid.

5. That at all times material to this action the by-laws of the Metropolitan Company have contained and now contain the following provision:

Article VII

Section 4. Each holder or holders of three hundred shares of stock shall have a license to use a designated box upon the parterre tier of the opera house. The license to use a box, above referred to, shall entitle the Stockholder or Stockholders, to whom such box is allotted, to occupy the box at all representations of Grand Opera, subject to such assessments and under such general rules and regulations as the Board of Directors may, from time to time, determine. No Stockholder who is indebted to the Company shall be allowed to use his box until such indebtedness is fully paid.

6. That the stockholders of the Metropolitan Company entered into an agreement, dated March 7, 1893, with the Metropolitan Company and with the New York Guaranty and Indemnity Company, as Trustee, a copy of which agreement is hereto annexed and made a part hereof and marked Exhibit C. That said agreement provides among other things:

"First. The stockholders, each for himself and his or her representatives, executors, administrators and assigns, severally agree with each other, and with the Company [i. e. the Metropolitan Company], [fol. 4] that they will, from time to time, contribute to and for the use of the said Company, such amounts of money (not exceeding ten dollars for each share of stock in any one year) as the Directors of the said Company may in their discretion see fit to call for."

7. That the stockholders of the Metropolitan Company entered into a further agreement, dated February 15, 1916, with the Metropolitan Company and with the Guaranty Trust Company of New York (successor to the New York Guaranty and Indemnity Company), as Trustee, a copy of which is hereto annexed and made a part hereof and marked Exhibit D. That said agreement provides among other things:

"First. Such of The Stockholders of The Company [i. e. the Metropolitan Company] as shall sign this agreement, each for himself and his or her representatives, executors, administrators and assigns, severally agree with each other and with The Company, that they will, from time to time, contribute to and for the use of The Company such amounts of money in addition to the assessments provided for in said agreement of March 7, 1893 (not exceeding however the additional sum of five dollars for each share of stock in any one year), as the directors of The Company may in their discretion see fit to call for."

8. That on or about March 28, 1905, the claimant became the owner and holder of three hundred shares of the capital stock of the Metropolitan Company, and thereby acquired a license to use the box numbered 15 upon the parterre tier of the said Opera House. That at all times thereafter the claimant continued to own and now owns said shares of stock and the license to use said box.

9. That pursuant to the provisions of the by-laws set forth in paragraph 5 above, and to the rules and regulations of the Board of [fol. 5] Directors of the Metropolitan Company, the claimant duly signed and became a party to each of said agreements, Exhibits C and D. That in each and every year during which the claimant has held said stock in the Metropolitan Company she has duly paid the annual assessment called for by the Directors of the Metropolitan Company and has been allowed to use said box; that in November, 1919, the Directors called for an assessment of $3,000, which the claimant duly paid.

10. That the Metropolitan Company has never realized any annual profit, and has never distributed any profits to its stockholders.

11. That, in consideration of the sum of $9,525, the claimant transferred the license to use said box for forty-seven performances during the grand opera season extending from November, 1919, to April, 1920, both inclusive; said consideration is computed as follows:

1 opening night performance	$550.00
11 Monday night performances at $275 each	3,025.00
11 Monday night performances at $200 each	2,200.00
23 Friday night performances at $150 each	3,450.00
1 "Prince of Wales" performance, November 18, 1919	300.00
47	$9,525.00

12. That prior to the opening of said opera season, the claimant employed Frank N. Dodd to obtain and submit to the claimant the names of persons who desired to occupy said box at representations of grand opera during the said season; that said Frank N. Dodd did submit to the claimant the names of such persons, and thereafter the claimant transferred the license to use said box to such persons for the above stated performances in consideration of the above stated amounts. That said Frank N. Dodd duly delivered the cards of [fol. 6] admission to said box to such purchasers and received and transmitted to the claimant the proceeds of such sale, after deducting a commission for such services. That said Frank N. Dodd, in disposing of the cards of admission to the claimant's box, acted solely as agent of the claimant and not as a proprietor, manager or employee of any opera house, theatre or other place of amusement. That the claimant is not now and never has been a proprietor, manager or employee of any opera house, theatre or other place of amusement. That the license to use the claimant's box, or any box on the parterre tier of said Opera House, was not purchasable at the ticket office of said Opera House or at any ticket office. That the license to use the claimant's box or any box on the parterre tier of said Opera House was not purchasable at any news stand or hotel, or at any other place except upon application to said Frank N. Dodd or to the individual stockholder.

13. That on or about August 4, 1919, the attorneys for the Metropolitan Company requested the Commissioner of Internal Revenue to issue a ruling with respect to the application of Section 800(a) of the Revenue Act of 1918 to transactions such as are set forth above; that under date of December 24, 1919, the Commissioner of Internal Revenue ruled as follows:

"Any stockholder of the Metropolitan Opera and Real Estate Company selling a ticket for admission to any of the boxes in question, whether direct or through the Opera House box office, is subject to the tax imposed by paragraph (3) of this section of the statute and must mark such ticket in accordance with article 51 of the enclosed Regulations. The basis for computing this tax is the difference between the established price of the box seat in the second tier for that performance, as determined by article 17 of the enclosed Regulations, and the price for which the ticket is sold."

That the established price at which the boxes situated in the second tier, which is the tier above the parterre boxes in the said Opera [fol. 7] House, and known as the grand tier boxes, were sold for the performances mentioned in paragraph 11 hereof at the box office to the general public was $60 for each performance. That $60 was not the regular or established price or charge of the claimant's box for such performances or the established price therefor at any ticket office or offices; and that there was no regular or established price or charge therefor, and no established price therefor at any ticket office or offices.

14. That in compliance with said ruling, the claimant, on or about January 28, 1920, made a return to the Collector of Internal Revenue for the Second District of New York, setting forth said transactions, and the claimant paid to said Collector of Internal Revenue the sum of $3,352.50, being a tax equal to 50 per centum of the excess of said sum of $9,525 over an amount equal to $60 for each of said forty-seven performances, said return being filed and said payment being made under protest and because of duress, and in order to avoid the imposition of penalties. That thereafter, on October 23, 1920, the claimant presented to the Commissioner of Internal Revenue, a claim for the refunding of said tax and alleged the same to have been erroneously or illegally collected. That said claim for refund was duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof. That on or about May 27, 1921, the Commissioner of Internal Revenue rendered a decision on said claim and rejected the same, ruling that said alleged tax was payable under the provisions of paragraph (4) of Section 800 (a) of the Revenue Act of 1918.

15. That no action has been taken on this claim in Congress or by any of the Departments except as aforesaid; that no person other than the claimant is the owner thereof or interested therein; that no as-
[fol. 8] signment or transfer of said claim or of any part thereof or interest therein has been made; that the claimant is justly entitled to the amount herein claimed, to wit, the sum of $3,352.50, from the United States after allowing all just credits and offsets; that the claimant is a citizen of the United States and has at all times borne true allegiance to the government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government; and that she verily believes the facts as stated in this petition to be true.

Wherefore, the claimant demands judgment against the United States for the said sum of $3,352.50, with interest.

Rushmore, Bisbee & Stern, Attorneys for Claimant.

Jurat showing the foregoing was duly sworn to by Chas. P. Howland omitted in printing.

[fol. 9] EXHIBIT A TO AMENDED PETITION

STATE OF NEW YORK,
City and County of New York, ss:

We, the undersigned, desiring to form a corporation pursuant to the provisions of The Business Corporations Law, all being of full age, and two-thirds being citizens of the United States, and a majority residents of the State of New York, do hereby certify:

I. The name of the proposed corporation is: Metropolitan Opera and Real Estate Company.

II. The objects for which it is to be formed, including the nature and locality of its business, are as follows: To encourage and cultivate a taste for music, literature and the arts, and to erect, maintain purchase or rent, a building or buildings for that purpose; to give, or cause to be given, operatic or dramatic representations, concerts, balls, and other entertainments; to acquire and maintain an opera house with all suitable equipment and with adjacent meeting rooms, ball rooms and other apartments; to lease, own and hold real estate adjacent to such opera house; to improve the same by the erection of buildings thereon; to manage the adjacent buildings, and carry on therein a hotel or apartment house with a restaurant and other facilities connected therewith; to rent and dispose of rooms, apartments or stores in such buildings, and to purchase and acquire all the real and personal property of the Metropolitan Opera House Company of New York (Limited) and the Metropolitan Improvement Company of New York (Limited); all in the City and County of New York.

III. The amount and description of the capital stock are as follows: One Million and Fifty Thousand Dollars in common stock.

[fol. 10] IV. The number of shares of which the capital stock shall consist is ten thousand five hundred, each of which shall be one hundred dollars.

V. The location of its principal business office is in the City and County of New York.

VI. Its duration shall be fifty years.

VII. The number of its directors shall be thirteen.

VIII. The names and post office addresses of the directors for the first year are as follows (all of said addresses being in the City of New York):

Names	Addresses
Samuel D. Babcock	32 Nassau Street.
George F. Baker	2 Wall Street.
George S. Bowdoin	23 Wall Street.
Robert Goelet	9 West 17th Street.
George G. Haven	32 Nassau Street.
Adrian Iselin	36 Wall Street.
Augustus D. Juillard	66 Worth Street.
Luther Kountze	120 Broadway.
D. O. Mills	15 Broad Street.
J. Pierpont Morgan	23 Wall Street.
William K. Vanderbilt	Grand Central Station.
George Peabody Welmore	59 Pine Street.
William C. Whitney	2 West 57th Street.

IX. The post office addresses of the subscribers, and a statement of the number of shares of stock which each agrees to take in the corporation, are as follows (all of the said addresses being in the City of New York):

Names	Addresses	No. of shares
Samuel D. Babcock	32 Nassau Street	300
Elbridge T. Gerry	261 Broadway	300
George G. Haven	32 Nassau Street	300
Adrian Iselin	36 Wall Street	300
George S. Bowdoin	23 Wall Street	300

[fol. 11] X. The following provision for the regulation of the business and the conduct of the affairs of the corporation is also made, to wit: No transfer of stock shall be made except to a person or persons previously approved by the directors, and upon compliance with such terms as may, from time to time, be prescribed by the by-laws.

In witness whereof, we have made, signed and acknowledged this certificate this third day of March, in the year one thousand eight hundred and ninety-three.

S. D. Babcock, G. S. Bowdoin, G. G. Haven, Adrian Iselin, Elbridge T. Gerry.

State of New York,
City and County of New York, ss:

On this third day of March, 1893, before me personally came Samuel D. Babcock, Elbridge T. Gerry, George G. Haven, Adrian Iselin and George S. Bowdoin, personally known to be the same persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

Martin Eiche, Notary Public, #37, N. Y. Co.

Exhibit B to Amended Petition

Agreement dated the 3rd day of April, in the year one thousand nine hundred and eight, between the Metropolitan Opera and Real Estate Company, a corporation organized under the laws of the State [fol. 12] of New York, hereinafter designated as the lessor, and the Conried Metropolitan Opera Company, a corporation organized under the laws of the State of New York, hereinafter designated as the lessee.

Whereas, the said lessor, by an instrument in writing bearing date the 23rd day of March, 1903, did let unto the said lessee the premises known as the Metropolitan Opera House in the block bounded by Broadway, Seventh Avenue, Thirty-ninth and Fortieth Streets, in the Borough of Manhattan, City of New York, and also

the premises known as numbers 209 and 211 West 40th Street, in the said Borough and City, for the term of five (5) years from the first day of June, 1903; and

Whereas, the said lessor, by an instrument in writing bearing date in the month of August, 1905, did let unto the said lessee the premises known as the Broadway Apartment House, consisting of buildings on the northwest corner of Broadway and 39th Street, and on the southwest corner of Broadway and 40th Street, in the City of New York, with certain exceptions therein made and reserved, for the term of two and one-half (2½) years, to commence on the first day of November, 1905; and

Whereas, by agreement dated the 14th day of March in the year one thousand nine hundred and six, the rights of the respective parties under the above recited leases were surrendered and the premises hereinafter described were leased to the party of the second part upon the terms and conditions set forth in such agreement;

Now, this agreement witnesseth that, for and in consideration of the mutual covenants herein contained, and for and in consideration of the mutual surrender of the rights of the respective parties under the last above recited lease, and for and in consideration of the sum of one dollar, by each of the parties hereto to the other in hand paid, [fol. 13] the receipt whereof it hereby acknowledged, the parties to this agreement do for themselves and their successors, surrender, cancel and yield up, from and after the first day of June, 1908, the above described lease, and do hereby render and declare the same to be no longer binding and in effect, and the said lessee does for itself and its successors bargain, sell, surrender and yield up to the said lessor all the lands and premises therein mentioned and the term of years therein yet to come, with all of its rights, title and interest thereto, free and clear of all encumbrances and assignments of every kind whatsoever;

And this agreement further witnesseth that, for and in consideration of the covenants hereinafter contained, and the consideration hereinbefore referred to, the said lessor hath granted, demised and to farm let, and by these presents doth grant, demise and to farm let unto the said lessee, and the lessee has agreed to take from the said lessor, for a term of years to commence on the first day of June, 1908, and (except as otherwise hereinafter provided) to end on the 31st day of May, 1913;

All the premises situated in the Borough of Manhattan, City of New York, known as the Metropolitan Opera House in the block bounded by Broadway, Seventh Avenue, Thirty-ninth and Fortieth Streets, in said Borough and City, including the premises known as the Broadway Apartment House, consisting of buildings on the northwest corner of Broadway and Thirty-ninth Street and on the Southwest corner of Broadway and Fortieth Street in said Borough and City, with the cellar under and third and fourth stories over the Broadway entrance of the Metropolitan Opera House, and also all the premises known as numbers 209 and 211 West 40th Street in said Borough and City, now in use as a storage warehouse, as the said

buildings now exist—excepting and reserving therefrom however, so much of the said Broadway Apartment House situated at the corner [fol. 14] of Broadway and 39th Street, as is leased to and is now occupied by the New Amsterdam National Bank, together with all the rights, easements, privileges, and appurtenances thereunto belonging and pertaining, and also all scenery, costumes, music, machinery, fixtures, furniture, properties, carpets and apparatus of every kind and nature whatsoever belonging to the lessor which at the time of the commencement of this lease, or hereafter during the term of this lease, may be contained in or be appurtenant to or used in connection with the said Opera House and Warehouse; and also the office furniture, fittings, carpets, and other personal property therein belonging to the said lessor, together with the appurtenances.

It being understood that this lease does not cover the personal property contained in or pertaining to the restaurant and other furniture or boxes hereinafter specified belonging to the individual stockholders of the lessor, or the rooms, office and directors' box hereinafter reserved, or the peronal property therein. But this lease does include the ballroom, kitchen and other club rooms on the second floor at or near the corner of Broadway and 39th Street.

And the lessee in consideration of such letting, hereby covenants and agrees to pay unto the lessor the yearly rent or sum of Sixty-seven thousand dollars, payable in instalments, during the term of this lease, as follows:

On the 31st day of August in each year	$5,000
On the 30th day of September in each year	2,000
On the 31st day of October in each year	2,000
On the 30th day of November in each year	10,000
On the 31st day of December in each year	7,000
On the 31st day of January in each year	7,000
On the 28th day of February in each year	10,000
On the 31st day of March in each year	7,000
On the 30th day of April in each year	7,000
On the 31st day of May in each year	10,000
	$67,000

[fol. 15] Provided, however, that if the lessee shall fully perform all the conditions and agreements hereinafter contained in regard to the production of grand opera, and shall become entitled to certain payments as hereinafter provided, such payments shall be credited to it, without interest, as payments on account of the rent hereby reserved.

The above letting is on the following conditions all and every one of which the lessee covenants and agrees to keep and perform:

1. The lessee has represented to the lessor as an innducement to the making of this lease that it now has a capital of one hundred and fifty thousand dollars fully subscribed in cash, and the lessee covenants that during the term of this lease it will not voluntarily reduce the said capital.

2. The lessee shall pay the lessor or its agent the said specified rent at the times and in the manner above provided, or so much thereof as may be due after crediting the payments to which it may be entitled under the subsequent provisions of this agreement; and in case of the non-payment of the said rent, at the times or in the manner above provided, or in case the said leased premises shall be deserted or vacated, the lessor shall have the right to enter the same as the agent of the said lessee, either by force or otherwise, without being liable to any prosecution therefor, and to relet the said premises as the agent of the lessee and receive the rent therefor.

3. Neither the said Opera House premises nor any part thereof shall be assigned, let or underlet or used or permitted to be used for any purpose other than concerts, theatrical or operatic representations or balls without the consent of the lessor by its Executive Committee first had and obtained, nor for any such purpose if objected to by the [fol. 16] said Executive Committee under penalty of forfeiture and damages. Notice of all intended balls and representations other than grand opera, shall be given to the lessor in writing at least one week in advance. The said Broadway Apartment House is not to be used or occupied for any purpose except as an apartment house and a shop or restaurant, except that a portion thereof may be used by said lessee for the purpose of its opera business, provided such use be first approved of by the said lessor in writing; said lessee is not to permit the apartments to be occupied by any but private families and individuals of good repute, and will not permit any part of the premises to be occupied or used as a public bar-room or for any business deemed extra hazardous on account of fire or otherwise without the written consent of the said lessor under the like penalty; but nothing herein contained shall prevent the said lessee from selling wines and liquors or permitting the same to be sold in the restaurant conducted in said building in the same manner as heretofore. If the said premises or any part thereof be assigned, let or underlet, used or permitted to be used contrary to the provisions of this agreement, the lessor may re-enter and re-let the said premises, this lease by such unauthorized act becoming void, if the said lessor shall so determine and elect. The lessee further covenants that if any default be made in the payment of the rent or of any part thereof that may be due and unpaid at the times above specified, or, if any of the conditions of any part of this agreement are not fulfilled, or if default be made in the performance of any of the covenants or agreements contained in any part of this agreement, then and in such event this agreement shall, at the option of the lessor, become wholly void, and said hiring and the relation of landlord and tenant shall wholly cease and determine; and the lessor may re-enter the said premises and remove all persons therefrom.

[fol. 17] 4. The lessee covenants and agrees to pay all water rates and license fees, but not taxes and assessments, which may be imposed upon the said premises occupied by the lessee and herein demised, during the term of this lease, within thirty days after the

same are imposed; and in case of default the lessor may pay the said water rates or license fees, and the amount so paid, with interest at the rate of six per cent. per annum shall be added to and made a part of the rent then next falling due, and shall be collected at the same time and in the same manner as though it were rent then accruing.

5. The lessee will not do or permit anything to be done in the demised premises, or bring or keep anything therein which may in any way increase the rates of fire insurance on the said buildings or any of them, or conflict with the laws relating to fires, or with the regulations of the fire department, or with any insurance policy upon said buildings or any part thereof, or which may conflict with any of the laws or ordinances of the City of New York, or the Building Department, or the Board of Health or any of the Departments of the said City. And in particular the lessee covenants that no work shall be done upon the demised premises by scene painters, carpenters or other workmen for any person other than the lessee or persons to whom the premises may have been underlet, except in the storehouse Numbers 209 and 211 West 40th Street.

6. The lessee hereby covenants and agrees at the termination of this lease to quit and surrender the demised premises, together with all the scenery, costumes, music, machinery, fixtures, furniture, properties, carpets and apparatus of every kind belonging to the lessor, in as good state and condition as the same were when originally received by the lessee on or about June 1, 1903, ordinary and reasonable use thereof since that date excepted.

[fol. 18] 7. The lessee shall have the right to take and remove from the said Opera House during the existence of this lease any of the scenery, electrical fixtures and other apparatus, dresses, properties or music belonging to the lessor but only for the purpose of giving operatic representations in other States in the United States, or in Canada, Mexico or Cuba, and only upon the following conditions, viz.: that any such removal of scenery, electrical fixtures and other apparatus, dresses, properties or music shall be at the risk of the lessee who shall before removal give the lessor a detailed receipt for the articles so removed and shall be bound in any event to restore the same, and shall keep the same insured for the benefit of the lessor during the time they are away from the Opera House, in an amount and manner satisfactory to the lessor, and deliver the policies to the lessor. And in case the said lessee shall fail to insure the said property or fail to keep the same insured for the benefit of the lessor during the time that such property is away from the Opera House, then the said lessor may procure such insurance for its own benefit in such amounts and in such companies as it may desire, and the said lessee does hereby covenant and agree that such premium for fire insurance shall be deemed additional rent, and covenants and agrees to pay for such insurance upon the date that the next installment of rent is due, and in case of failure on the part of said lessee to pay the premium on such insurance at such time, then it shall be lawful for

the said lessor to collect the amount due for such premium of insurance together with six per cent. interest thereon from the date the same was paid by the lessor, in the same manner, and the said lessor may employ the same remedies, as is permitted to it to collect the rents herein reserved in case of default in the payment of such rents.

8. The lessor is not required to procure or furnish to or for the [fol. 19] use of the lessee any new dresses, scenery, properties, or other like material for new productions of opera or otherwise, and any such articles which the lessee needs shall be procured by it at its own expense; but nothing in this paragraph contained shall be construed to relieve the lessee from the necessity of complying with the terms of the two foregoing paragraphs. In case the lessee does procure new dresses, scenery, properties, electrical effects and other like material for the purpose of giving operatic or dramatic representations in the Opera House hereby demised, and not for the purpose of replacing articles belonging to the lessor, the same, as well as any others heretofore similarly procured by the lessee shall remain the property of the lessee and may be removed by it at or any time before the expiration of this lease.

9. If, during the term of this lease, the Opera House hereby demised is wholly destroyed by fire or the elements, then this lease shall, not only as to the Opera House but also as to the Apartment House and all the leased premises, cease and become null and void from the date of such destruction, and the lessee shall immediately surrender the said premises and all interest therein to the lessor, and shall only pay the proportionate rent for the period of actual occupancy prior to the time of such destruction or surrender. If, during the said term, the said Opera House is so damaged by fire or the elements as to render the same wholly unfit for the lessee's use and occupation, and is so badly injured that it cannot be repaired within sixty days from the happening of such injury, then this lease shall in like manner cease and become null and void from the date of such damage; provided, however, that if the damage can be repaired at a cost of not exceeding one hundred and fifty thousand dollars to the lessor, the lessee may, at its option, require the lessor to repair the same, as hereinafter provided, notwithstanding such repairs may occupy more than sixty days to execute. In case of destruction or [fol. 20] partial destruction to the extent above mentioned, the lessor may re-enter and repossess the premises discharged of this lease and may remove all parties therefrom. In case, however, the said Opera House shall be only so slightly injured as to be repairable within sixty days from the happening of such injury, or in case the injuries can be repaired at a cost not exceeding one hundred and fifty thousand dollars, and the lessee, by a notice in writing, served on the lessor within ten days after the happening of such injury and not less than one year before the date then fixed for the termination of this lease, shall require the lessor to repair the said Opera House, then and in either of said events this lease shall not terminate, but rent shall not run or accrue after said injury while the process of repair is going on between October first and April first in any contract year,

and the lessor shall repair the same with all reasonable speed, and then the rent shall recommence immediately after said repairs shall have been completed.

If during the term of this lease the said Apartment House shall be totally destroyed by fire or by the elements, leaving the Opera House undamaged or only partly damaged to the extent above mentioned, then this lease shall, as to the Apartment House only, cease and become null and void from the date of such destruction, and the lessee shall immediately surrender the said Apartment House and all interest therein to the lessor, and shall only pay the proportionate rent of the Apartment House for the period of actual occupancy prior to the time of such destruction or surrender. If during the said term, the said Apartment House is so damaged by fire or the elements as to render the same wholly unfit for the lessee's use and occupation and is so badly injured that it cannot be repaired within sixty days from the happening of such injury, then this lease shall in like manner cease and become null and void as to the Apartment House from the date of such destruction; provided, however, that [fol. 21] if the damage can be repaired at a cost not exceeding $50,000 to the lessor the lessee may, at its option, require the lessor to repair the same as hereinafter provided notwithstanding such repairs may require more than sixty days to execute. In case of destruction or partial destruction of the Apartment House to the extent above mentioned, the lessor may re-enter and re-possess the said Apartment House discharged of this lease, and may remove all parties therefrom. In case, however, the said Apartment House shall only be so slightly injured, as to be repairable within sixty days from the happening of such injury, or in case the injuries can be repaired at a cost not exceeding $50,000 and the lessee by a notice in writing served on the lessor within ten days after the happening of such injury, and not less than one year before the date then fixed for the termination of this lease, shall require the lessor to repair the said Apartment House, then, and in either of said events, this lease shall not terminate as to the Apartment House, but rent shall not run or accrue in respect of said Apartment House while the process of repair is going on, and the lessor shall repair the same with all reasonable speed, and then the rent shall recommence immediately after the said repairs shall have been completed; provided, however, that the lessor shall not be required to make such repairs to the Apartment House to an amount which, together with any repairs it may in consequence of the same disaster be required by the lessee to make to the Opera House, will cause the total cost of such repairs together to exceed $150,000. It is understood and agreed that for all purposes and in all the contingencies mentioned in this second paragraph of this article 9 of this lease the said Opera House and the said Apartment House shall be considered separate and distinct the one from the other, so that in case the said Apartment House shall be totally destroyed or partly destroyed to the extent aforesaid [fol. 22] by fire or by the elements, leaving the Opera House undamaged, or only partly damaged and repaired, this lease shall not cease or terminate as to the Opera House, but the rent of the Opera

House hereunder shall continue and shall be apportioned and shall be paid by the said lessee, and for such purposes the rent for the said Apartment House shall be considered to be Twelve thousand dollars ($12,000) per annum and for the said Opera House the sum of Fifty-five thousand dollars ($55,000) per annum.

If, however, the said Opera House and the said Apartment House, or either, shall not be rendered unfit for the lessee's use and occupation, the lessor shall be bound to repair the same with reasonable promptitude, and in that case the rent accrued and accruing shall not be suspended, nor shall this lease cease or determine.

10. If, during the term of this lease, the storehouse Numbers 209 and 211 West 40th Street is wholly dstroyed by fire or the elements, or is damaged so as to be wholly unfit for occupation—the Opera House not being destroyed or rendered wholly unfit for the lessee's us and occupation, and not being so badly injured that it cannot be repaired within sixty days, or the lessor having been required by the lessee to repair the same as hereinbefore provided—then and in either of such events this lease shall not cease as to the rest of the demised premises, but shall cease as to said storehouse; and the rent hereby reserved shall be reduced by the sum of Five thousand dollars ($5,000) a year, such reduction to begin from the date of such destruction or damage. But in case the said storehouse shall not be rendered unfit for occupation, the lessor shall be bound to repair the same with reasonable promptitude, and in such case the rent accrued and accruing shall not be suspended, nor shall this lease in any respect cease or be affected. If in the destruction or damage [fol. 23] of the storehouse as aforesaid, the scenery stored therein shall be destroyed or damaged so as to be unfit for use, then and thereafter the rental of the Opera House as well shall not run or accrue between October first and April first in any contract year until the lessee shall be able to replace the scenery destroyed or damaged to an extent sufficient to enable the lessee to continue to give representations of grand opera as contemplated by the terms of this lease. For the purposes of this article, rent of the Apartment House and of the Opera House shall be apportioned as provided in the foregoing article 9.

11. And the said lessee does hereby accept the said demised premises without any representations as to their condition whatever, and does hereby covenant and agree that the same are in perfect order and condition, and that it will not make any request for any expenditure on the part of the said lessor during the term of this lease for any repairs, additions, alterations or improvements whatsoever.

12. The lessee hereby undertakes and assumes the entire charge of the demised premises and shall at its own expense keep the whole of the same, including all of the rooms and offices and the boxes on both the parterre and grand tiers reserved by the lessor as hereinafter stated, and the porte-cocheres, sidewalk coverings, entrances, doors, railings and fire-escapes, together with the steam heat apparatus, water pipes, tanks, roof, skylights, etc., in the Opera House,

the Apartment House and the storage building above described in proper repair and suitably cleaned, heated and lighted, as hereinabove specified; it being understood and agreed that all repairs both exterior and interior are to be made by the lessee at the lessee's expense, and that the lessor shall at no time during the continuance of this lease be called upon to make any repairs to said premises whatsover and shall not be required to incur any expense whatsoever [fol. 24] in the maintenance, management or control of said buildings; and if any further connection is desired between the theater and the apartment buildings, the necessary construction is to be at the expense of the said lessee, the work, however, to be done in a manner to be approved by the lessor, and should such connection in any way increase the expense for fire insurance on the property, such increase is to be borne by the said lessee. The lessee is not, however, to make any substantial alteration in the premises hereby demised without the written consent of the lessor, under penalty of forfeiture and damages.

13. Notwithstanding the general terms used in this agreement in describing the Opera House included in this lease, it is distinctly understood and agreed that the lessor reserves for its own use the Directors' office at the Southeast corner of Fortieth Street and Seventh Avenue, the Directors' Box on the first or Grand Tier, the Directors' room and the ladies' room on the parterre tier, and also reserves free admission at all times to all parts of the demised premises for the Directors and four other persons in its employ. It is understood that the four persons here referred to are the employees of th lessor and are to be engaged and paid by it, and that they or such of them as the lessor may designate are to have entire charge of all the personal property, furniture, etc., belonging to the boxholders or stockholders of the lessor and are to care for the same.

14. It is further covenated and agreed by the lessee and is made a condition of this lease that the lessee shall and will give a season of not less than sixty (60) and not more than seventy (70) regular representations of Grand Opera at the said Metropolitan Opera House in each year of the term of this lease, such representations to be given in the last week of November and in the months of December, Jan- [fol. 25] uary, February or March; that is to say, not less than sixty (60) and not more than seventy (70) such representations are to be given in the period between November 24th, 1908, and March 31st, 1909; and not less than sixty (60) and not more than seventy (70) such representations are to be given in the corresponding period of each succeeding year; the word "year" being taken to mean the contract year beginning June 1 and ending the following 31st day of May. Such representations shall be in every respect first-class and shall be given with first-class artists, ensemble, chorus, ballet, scenery, properties and orchestra; and not more than forty per cent. of the subscription representations in each year shall be given in German, except with the approval of the lessor given by its Executive Committee.

15. The lessee shall and will reserve and set apart for the use of the lessor or such persons as it may designate at every representation of Grand Opera given during the term of this lease—whether the same be in excess of the seventy (70) regular representations a year above provided or not—all of the boxes situated on the parterre tier of the said Opera House, in addition to the box above mentioned on the first or grand tier; all other boxes and seats in the said house to remain at the disposal of the lessee. Six free admissions shall be allowed for each of the parterre boxes reserved as aforesaid. The box reserved on the first or the grand tier being intended for the use of the directors, on all occasions, whenever the house is open, and not only for or during representations of Grand Opera, but also for and during all concerts, balls and entertainments of every kind whatsoever for which said Opera House may at any time be used or occupied. The lessee is not required to give any special tickets of admission in respect thereto.

16. The regular operatic performances required to be given by the lessee under the foregoing clauses of this agreement shall be [fol. 26] given four times a week, on Monday, Wednesday and Friday evenings and Saturday matinees for not less than fifteen consecutive weeks in each season.

17. The lessee is at liberty to give, during any such period between November 24th and March 31st or at any other times, any number of extra representations of Grand Opera, in addition to the seventy (70) regular representations a year above provided for. In all cases of extra representations or performances the stockholders of the lessor shall have the same use of all the boxes hereinbefore reserved, with six free admissions for each parterre box, as in case of the regular performances.

18. The lessor hereby covenants and agrees to pay to the lessee as a subsidy, either by payment in cash or by a credit on account of the rent reserved in said lease, the sum of One thousand dollars ($1,000), for each of the regular performances of Grand Opera to be given as above provided; the word "subsidy" being understood and agreed to mean a payment to the lessee as a compensation for the boxes, Directors' office, Directors' rooms, and the ladies' room on the parterre, herein reserved to the lessor. No such subsidy shall be paid or credited in respect of any extra performances that may be given in addition to the four regular performances a week above provided for; but, up to a total amount of $70,000 in any contract year, the lessee shall be entitled to be paid, as aforesaid, the sum of $1,000 for each such regular performance. If and when the yearly rental hereby reserved has been fully paid for the entire year to the lessor either in cash or by credit as aforesaid, the said subsidy shall be paid to the lessee in cash at the end of each week of the operatic season.

19. Before the opening of each opera season, a list of the principal artists engaged shall be submitted to the lessor for its informa-

tion, and at all the regular operatic representations, not exceeding [fol. 27] seventy per year, at least two artists of recognized ability and not objected to by the lessor shall appear, except in case of illness or other unforeseen circumstances.

20. In case of any dispute or disagreement between the parties concerning any matter arising under this agreement the same shall be determined by arbitration as follows: The lessor shall nominate one person, and the lessee shall nominate one person, which nominations shall be made and signified in writing by each party to the other within ten days after notice by either party to the other of the demand to submit to arbitration any dispute. In default of such nomination by either party within the time above limited for making the same, the person who shall have been nominated by the other party shall appoint and associate with himself one other person for the purpose aforesaid. The two persons nominated or appointed as above shall then proceed as soon as possible to appoint a third person to be associated with them for the same purpose, if they can agree on such a person; if they cannot so agree, then each of them shall nominate two persons, and from the names of the four persons so nominated the name of one shall be drawn by lot, and he shall be associated for the purpose aforesaid with the two persons previously nominated or appointed. The three persons so elected shall then proceed to determine the dispute after making such inquiry or taking such proofs as they may deem necessary, and shall have the power to award damages against either party for any breach of this agreement. The decision of any two of the three arbitrators shall in all cases be binding and conclusive. Each person nominated or appointed as an arbitrator under this agreement shall, before entering upon his duties, be sworn before some person authorized to administer oaths to act therein faithfully and impartially, and the award or decision of any such arbitrators shall be made in writing and in duplicate and the one part thereof de- [fol. 28] livered to the lessor and the other to the lessee.

21. All notices to be given by either party to the other under this agreement, including nominations of arbitrators, must be given in writing and may be delivered either in person or by mail. Those given to the lessor shall be addressed to its president or treasurer at their respective places of business; those given to the lessee shall be addressed to it at the Metropolitan Opera House. Either party may from time to time by notice to the other give a new address, to which future notices shall be sent.

22. It is understood that Mr. Heinrich Conried will cease, on or before April 28, 1908, to be President and Managing Director of the lessee, and that its corporate name will be changed to "Metropolitan Opera Company," if that name be available.

The following are the present directors of the lessee: Edmund L. Baylies, Rawlins L. Cottenet, W. Bayard Cutting, T. De Witt Cuyler, Robert Goelet, George J. Gould, Eliot Gregory, Frank G. Gris-

wold, James H. Hyde, Otto H. Kahn, Clarence H. Mackay, Hamilton McK. Twombly, William K. Vanderbilt, Henry Rogers Winthrop, Harry Payne Whitney.

In case of the election of any other or additional directors, the names proposed shall first be submitted to the lessor, and no one shall be elected in place of or in addition to any of the foregoing, to whom, prior to his election, objection shall be made by the lessor.

In the event of the capital of the lessee becoming impaired to the extent of one hundred thousand dollars by reason of the losses in- [fol. 29] curred in any one year, either party hereto shall have the right to terminate this lease on the first of June following such impairment by giving prior thereto sixty days' notice in writing of its intention to terminate the same, unless the lessee shall, within said sixty days, make good such impairment. No failure to take advantage of this option shall operate as a waiver of the right to terminate this lease on any subsequent or continuing impairment of capital of the lessee.

23. The lessee hereby agrees during the term of this lease, to furnish the tenant of the premises now occupied by the New Amsterdam National Bank with all necessary steam heat at reasonable prices to be agreed upon by the parties hereto.

24. And the lessor hereby covenants with the lessee that on paying the said rent, and on keeping and performing all the said conditions and covenants contained herein, the said lessee shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term of this lease.

25. This agreement shall be binding upon the parties hereto and upon their respective successors and assigns; but it is distinctly understood and agreed that this agreement shall not, nor shall any interest therein, be assignable by the lessee to any person or persons whomsoever without the consent in writing of the lessor previously obtained, and that any assignment made without such consent shall be wholly void, so far as the rights and obligations of the lessor are concerned.

26. No waiver of any right of the lessor dependent upon a failure of the lessee to comply with or to perform any of the covenants or conditions of this lease shall be binding upon the lessor unless made in writing by an officer of the lessor, duly authorized thereto; and no waiver of such right or failure of the lessor to enforce any [fol. 30] of the covenants or conditions of this lease shall excuse or affect any subsequent default or omission or breach by the lessee or any of the lessor's rights to take advantage of such subsequent default, omission or breach.

27. The said lessee does also covenant and agree to comply with all of the ordinances, regulations and directions of the Board of Health, Fire and Police Departments, and other Municipal Departments of the City of New York, and does hereby covenant and agree

to make, at its own expense, any alterations, additions or improvements that may hereafter be required by any ordinances of the City of New York or by any rules or regulations of any of the Municipal Departments; provided, however, that, if the expense of any such alterations, additions and improvements shall exceed in any one contract year the aggregate sum of $5,000, then the amount of such expense in excess of $5,000 shall be paid in equal parts by the lessor and the lessee.

28. If said Opera House shall be destroyed by fire or the elements, or damaged so as to effect the termination of this lease, or if, after the termination of this lease, the said Opera House shall be sold, the lessee shall have the preferential right, at its option, to lease any new Opera House which may be built by or with the co-operation of the lessor, if the lessee shall, within a reasonable time after an opportunity shall have been afforded it to do so, express its willingness to lease the same upon terms as advantageous to the lessor as shall be offered by any other responsible corporation, person or firm.

29. If, at any time during the continuance of this lease, the lessee shall determine to sell and dispose of its stock, including costumes, scenery, stage requisites, equipment and machinery, and its unexpired contracts with artists, chorus, ballet, stage hands, archestra, [fol. 31] publishers and others, or to wind up its business, then the lessor shall have the preferential right, at its option, to purchase such stock and to assume such contracts, if the lessor shall, within thirty days after an opportunity shall have been afforded it to do so, offer to purchase and assume the same upon terms at least as advantageous to the lessee as shall be offered by any other responsible person, firm or corporation.

30. This lease shall be self-renewing, at the same annual rent, and upon all the terms, conditions and covenants hereof for terms of five years each, that is to say: If neither party shall notify the other on or before the thirty-first day of May, 1910, that it is unwilling to renew this lease, then ipso facto this lease shall be renewed as aforesaid and continued for a term of five years to commence on the first day of June, 1910, and to end on the thirty-first day of May, 1915; and if neither party shall notify the other on or before the thirty-first day of May, 1912, that it is unwilling to renew this lease, then ipso facto this lease shall be renewed as aforesaid and continued for a term of five years to commence on the first day of June, 1912, and to end on the thirty-first day of May, 1917; and thereafter unless and until either party shall notify the other, not less than three years prior to the expiration of the then present five years' term as so continued and renewed, that it is unwilling further to renew this lease, this lease shall, in like manner, be continued and renewed for further terms of five years each to commence in each instance three years prior to the expiration of such then present five years' term; but if either party shall so notify the other not less than three years before the expiration of

such then present five years' term that it is unwilling to renew this lease, then this lease shall terminate at the end of such then present five years' term. It is the intention that the omission to give such [fol. 32] notice on or before the dates respectively fixed as above provided shall in each instance be deemed and taken to be a renewal and extension of this lease as aforesaid, and that each such renewal shall be in all respects valid and binding upon the parties hereto without further act or writing, but the lessor covenants and agrees, upon the request of the lessee, to execute and deliver from time to time any and all renewal leases and other writings reasonably required by the lessee for the purpose of effectuating any and every such renewal to which the lessee shall be entitled as herein provided.

Provided, however, that if, after May 31, 1913, this lease continuing, the course of conduct of its affairs by the lessee shall, in the opinion of the lessor, be such as to give just and valid cause to believe that such conduct will be seriously detrimental to the moral and artistic interests of the Metropolitan Opera, and the lessor shall so notify the lessee, then the matter shall be submitted to arbitration in the manner hereinbefore provided, and if the decision of the arbitrators shall be that said course of conduct is in fact such as will be seriously detrimental to said moral and artistic interests, then this lease shall terminate at the end of the contract year next following the contract year in which such decision shall be delivered to the lessee. But if the arbitrators shall decide otherwise, and the lessor shall nevertheless insist upon the termination of this lease, then, at the lessee's option, the lessor shall assume all of the lessee's unexpired contracts with artists, chorus, ballet, stage hands, orchestra, publishers and others, and shall purchase, at their then appraised value, all of the lessee's stock, costumes, scenery, stage requisites, equipment and machinery, including all fixtures that shall have been placed by the lessee in or upon the said premises during the whole time it shall have occupied the same, allowing therefor the full valuation at which the same shall then be estimated in or in connection with the buildings and not for the pur- [fol. 33] pose of removal, such appraised value to be determined by arbitration in the manner hereinbefore provided; and this lease shall terminate at the end of the contract year next following the contract year in which such assumption and purchase shall be effected.

In witness whereof, the parties to this agreement have caused their respective corporate seals to be hereunto affixed, and these presents to be subscribed by their duly authorized officers as of the day and year first above written—in duplicate.

Metropolitan Opera and Real Estate Company, by Charles Lanier, Vice-President; George S. Bowdoin, Treasurer. (Corporate Seal.) Conried Metropolitan Opera Company, by H. R. Winthrop, Vice-President; R. L. Cottenet, Secretary. (Corporate Seal.)

STATE OF NEW YORK,
County of New York, ss:

On the 9th day of April, 1908, before me personally came Charles Lanier and George S. Bowdoin, with whom I am personally acquainted, who, being by me severally duly sworn, said, that they resided in The City & County of New York, N. Y.; that they are the Vice-President and Treasurer respectively of the Metropolitan Opera and Real Estate Company, the corporation described in and [fol. 34] which executed the foregoing instrument; that they knew the corporate seal of said corporation; that the seal affixed to above instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by the like order.

William G. Wilson, Notary Public, No. 178, New York County. (Notarial Seal.)

STATE OF NEW YORK,
County of New York, ss:

On the 20 day of April, 1908, before me personally came H. R. Winthrop, with whom I am personally acquainted, who, being by me duly sworn, said, that he resided in the City & County of New York; that he is the Vice-President of the Conried Metropolitan Opera Company, the corporation described in and which executed the foregoing instrument; that he know the corporate seal of said corporation; that the seal affixed to above instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by the like order.

John Brown, Notary Public, Kings County, #207. Certificate filed in New York Co. (Notary Seal.)

EXHIBIT C TO AMENDED PETITION

Agreement, made this seventh day of March, in the year one thousand eight hundred and ninety-three, by and between the Metropolitan Opera and Real Estate Company (hereinafter called "The Company"), party of the first part; and the several individuals whose names are hereunto subscribed, and who are stockholders in [fol. 35] the said Company (hereinafter called "The Stockholders"), parties of the second part; and the New York Guaranty and Indemnity Company (hereinafter called "The Trustee"), party of the third part, witnesseth as follows:

Whereas, the Company has been organized for the following purposes, among others, to wit: To encourage and cultivate a taste for music, literature and the arts and to erect, maintain, purchase or rent a building or buildings for that purpose; to give or cause to be given, operatic or dramatic representations; and to acquire and maintain an opera house with suitable equipment; and

Whereas, it has been proved by experience of opera houses in New York and other cities of the United States and Europe, that the ordinary receipts from performances of grand opera are insufficient to support and maintain the same in a satisfactory manner; and

Whereas, it is one of the purposes of the Company that each holder of a sufficient amount of stock therein shall have a license to use a designated box in the Opera House upon all occasions upon which grand opera may be given therein, without being called upon to pay the ordinary charge for admission; and

Whereas, the stockholders, in consideration of such license, are willing to contribute ratably such limited amounts of money as may, from time to time, be deemed necessary by the directors to provide for giving grand opera, or other operatic or dramatic representations, and to support and maintain the opera house of the Company in a satisfactory manner; and

Whereas, it is deemed desirable to provide a mode for securing [fol. 36] prompt payment of the assessments which may be made for the purposes above mentioned by the Directors and to limit the liability of stockholders and to provide, by the deposit of collateral security, for the payment by the present and future stockholders of the sums they may be called upon to pay.

Now, therefore, in consideration of the premises and of the mutual agreements hereinafter contained, and of the sum of one dollar by each of the subscribers hereto, to each of the others in hand paid, the receipt whereof is hereby acknowledged, it is agreed by and between the undersigned individuals and corporations, each for himself or itself, and not for the others, or any of them, as follows, to wit:

First. The stockholders, each for himself and his or her representatives, executors, administrators and assigns, severally agree with each other, and with the Company, that they will, from time to time, contribute to and for the use of the said Company, such amounts of money (not exceeding ten dollars for each share of stock in any one year) as the Directors of the said Company may in their discretion see fit to call for. It is expressly understood and agreed that payment of all such contributions can be enforced only by the sale of stock pledged to the Trustee, as hereinafter provided, and not otherwise.

Second. Whenever, and as often as the Board of Directors of the Company shall determine that an assessment upon the stockholders, under the provisions of this agreement, is to be made, they shall cause notices in writing to be issued to each stockholder whose name appears upon the books of the Company, requiring each such stockholder to pay the amount stated in such notice on or before a day to be specified therein, which shall not be less than thirty days from the mailing of such notice.

[fol. 37] Third. In order to secure payment of the amounts which the stockholders hereby agree to pay, they do hereby pledge the amount of stock in the Company held by them respectively, and to that end will deposit their several certificates, duly endorsed, with

the above named Trustee, to be held for the purposes and upon the terms and conditions specified below.

Fourth. In case any one or more of the stockholders shall fail to pay the sum assessed, as provided in clause second of this agreement, on or before the day fixed in the notice mentioned therein, the said Trustee shall forthwith mail notice to such delinquent stockholder or stockholders, notifying him or them that unless the amount assessed, with six per cent. interest, be paid on or before a day specified in such notice, which shall not be less than ninety days from the mailing thereof, their respective shares of stock will be sold.

Fifth. In case the amount of any assessment, with the interest thereon, be not paid by the day specified in the notice mentioned in clause fourth, the Trustee shall sell all stock deposited with it by the person so failing to pay, which sale shall be made at public auction in the City of New York; notice of the time and place of sale shall be mailed to the person so failing to pay, at least ten days before the sale, and shall also be published at least twice in each week for two successive weeks before the sale in two daily newspapers published in the City of New York. The Trustees shall apply the net proceeds of any such sale (after payment of all expenses of sale, including the Trustee's compensation therefor) to the payment of all unpaid assessments thertofore levied upon the stock so sold, with the interest thereon, and it shall render the surplus (if any) arising upon such sale to the holder of such stock, his executors, administrators or assigns. All purchasers from such Trustee shall be required to be-
[fol. 38] come parties to this agreement, and in all other respects to conform to the provisions of the by-laws respecting transfers of stock.

Sixth. The notices required by clauses second, fourth and fifth of this agreement shall be served by mailing such notices to the respective stockholders at the addresses stated below, or at such other addresses as may be substituted, as hereinafter provided; and such notices shall be deemed to have been served at the time they are deposited in the mail. Any stockholder may, from time to time, substitute a new address by giving notice, in writing, to the Secretary of the Company, and may, in like manner, require notices to be mailed to an agent whose address is given.

Seventh. It is understood and agreed that there shall not, under any circumstances whatever, be any liability on the part of any stockholder for any deficiency arising upon any such sale, nor shall any suit or action at law be maintained against any of the stockholders or their executors, administrators or assigns, for the recovery of any sum or sums of money which may be claimed to be due under or by virtue of this agreement; it being the true intent and meaning of this agreement to limit the liability of each stockholder for calls or assessments by the directors to the value of the stock held by each respectively.

Eighth. The said Trustee shall, from time to time, issue receipts specifying the amount of stock pledged with it by each stockholder respectively, and the number of the box or boxes to which such stockholder is entitled by virtue of holding the same, which receipts shall not be transferable, and shall contain upon their face a reference to this agreement. Upon the surrender of any such receipt, the Trustee shall deliver the corresponding certificate of stock to the Secretary of the Company for purposes of transfer only and the [fol. 39] stockholders hereby severally agree, for themselves and their respective executors, administrators and assigns, that every person to whom any share of stock is transferred shall and will, immediately upon such transfer being made, sign this agreement or such other instrument as may be necessary to make him a party hereto, and that he shall be bound by all the terms hereof, and that such transferee shall immediately, upon the issue of a new certificate of stock, duly endorse his certificate and deliver the same, so endorsed, to the Trustee to be held under the terms of this agreement, and shall accept a new receipt to be issued by the Trustee.

Ninth. This agreement may be abrogated and rescinded at any time by a new agreement, in writing, executed by the Company and the holders of two-thirds of the stock then outstanding; and, upon the execution of such agreement and its delivery to the Trustee, the Trustee shall return to each stockholder the certificates of stock standing in his or her name, upon surrender of the corresponding receipts.

Tenth. The Trustee has become a party to this instrument in order to signify its acceptance of the trust hereby created; but it is expressly understood and agreed that no responsibility shall attach to the Trustee for its acts hereunder, or in respect of any matter or thing, omission or commission, except its own wilful default; nor shall it be answerable for any default or miscarriage of any agent or attorney appointed hereunder, if such agent or attorney be selected with reasonable care.

In witness whereof, the said Metropolitan Opera and Real Estate Company, and the said New York Guaranty and Indemnity Company, have caused this agreement to be executed by their respective [fol. 40] officers, and their corporate seals to be hereunto affixed; and the stockholders of the said Metropolitan Opera and Real Estate Company have severally subscribed their names hereto on the day and year first above written.

The Metropolitan Opera and Real Estate Company, by G. G. Haven, President; G. S. Bowdoin, Treasurer. (Corporate Seal.) New York Guaranty & Indemnity Company, by Edwin Packard, President; H. A. Murray, Secretary. (Corporate Seal.)

Exhibit D to Amended Petition

Agreement made this fifteenth day of February, 1916, by and between the Metropolitan Opera and Real Estate Company (hereinafter called "The Company"), party of the first part, and the several individuals whose names are hereunto subscribed and who are stockholders in the said Company (hereinafter called "The Stockholders"), parties of the second part; and the Guaranty Trust Company of New York, formerly the New York Guaranty and Indemnity Company, (hereinafter called "The Trustee"), party of the third part, Witnesseth as follows:

[fol. 41] Whereas, the contribution or assessment of Ten Dollars for each share of stock of The Company which has heretofore been paid under Section First of the agreement dated March 7, 1893, made between The Company, as party of the first part, all of the stockholders of The Company, as parties of the second part, and the New York Guaranty and Indemnity Company, as party of the third part, is inadequate to meet the financial requirements of The Company now existing and that will hereafter exist, and if sufficient funds are not provided by The Stockholders, it will or may interfere with, injuriously affect or defeat the purposes for which The Company was organized as set forth in said agreement of March 7, 1893, and impair or destroy the value of the licenses conferred upon The Stockholders by virtue of the said agreement; and

Whereas, it is deemed desirable to avoid the consequences above referred to, to assure which it is considered essential that provision should be made for the procurement of the requisite funds now and hereafter in the manner hereinbefore set forth.

Now, therefore, in consideration of the premises and of the mutual agreements hereinafter contained, and of the sum of One dollar ($1.00) by each of the subscribers hereto to each of the others in hand paid, the receipt whereof is hereby acknowledged it is agreed by and between the undersigned individuals and corporations, each for himself and not for the others, or any of them, as follows:

First. Such of The Stockholders of The Company as shall sign this agreement, each for himself and his or her representatives, executors, administrators and assigns, severally agree with each other, and with The Company, that they will, from time to time, contribute to and for the use of The Company such amounts of money [fol. 42] in addition to the assessments provided for in said agreement of March 7, 1893 (not exceeding however the additional sum of Five dollars for each share of stock in any one year), as the directors of The Company may in their discretion see fit to call for. It is expressly understood and agreed that payment of all such contributions can be enforced only by the sale of stock pledged to The Trustee, in the manner provided in the said agreement of March 7, 1893, and not otherwise.

Second. In order to secure the payment of the amounts which The stockholders hereby agree to pay, they do hereby pledge the amount of stock in the Company held by them respectively, the certificates of which are now on deposit with The Trustee pursuant to the terms of said agreement of March 7, 1893; and they do further agree that all of the provisions of the said agreement of March 7, 1893, shall apply to the said additional contribution or assessment of Five dollars per share of stock, and of the pledge of stock to secure the payment thereof, with like force and effect as the same apply to the contribution or assessment of Ten dollars per share of stock, and of the pledge of stock to secure the payment thereof, as provided for by said agreement; and all of the other provisions of said agreement are hereby adopted and made a part of this agreement with the same force and effect as if the same were written herein at large and signed by the subscribers hereto.

Third. This agreement is not in abrogation, or rescicsion, of, or in substitution for, the said agreement of March 7, 1893, but is an additional and separate agreement between the parties hereto.

Fourth. This agreement may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement.

[fol. 43] In witness whereof the said Metropolitan Opera and Real Estate Company and the said Guaranty Trust Company of New York have caused this agreement to be executed by their respective officers and their corporate seals to be hereunto affixed; and Stockholders of the said Metropolitan Opera and Real Estate Company have severally subscribed their names hereto on the day and year first above written.

Metropolitan Opera and Real Estate Company, by A. D. Juilliard, President, and G. G. Haven, Treasurer. (Corporate Seal.) Guaranty Trust Company of New York, by Wm. C. Cox, Vice-President. (Corporate Seal.)

Attest: C. E. Hebbard, Secretary.

[fol. 44] III. General Traverse—Filed April 23, 1923

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Robert H. Lovett, Assistant Attorney General.

IV. Argument and Submission of Case

On April 8, 1924, this case was argued and submitted on merits by Mr. Chas. P. Howland, for the plaintiff, and by Messrs. Fred K. Dyar and Charles T. Hendler, for the defendant.

[fol. 45] **V. Findings of Fact, Conclusion of Law, and Opinion of the Court by Hay, J.**—Entered May 5, 1924

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT

I

At all times material to this action the plaintiff, Georgine Iselin, was and now is the owner of three hundred shares of the capital stock of Metropolitan Opera and Real Estate Company (hereinafter referred to as the Metropolitan Company), a corporation organized under the laws of the State of New York and having its principal office at No. 150 West Fortieth Street, city of New York, N. Y.

II

The objects of the Metropolitan Company are stated in its certificate of incorporation, which is attached to the petition of the plaintiff marked "Exhibit A," and made a part hereof by reference. At all times material to this action the Metropolitan Opera Company owned and now owns the premises known as the Metropolitan Opera House in the block bounded by Broadway, Seventh Avenue, Thirty-Ninth and Fortieth Streets, in the Borough of Manhattan, city of New York.

III

In and by a certain lease and agreement dated April 3, 1908, which is still in full force and effect, the Metropolitan Company leased the said Opera House and other property to the Conried Metropolitan Opera Company, the name of which was later changed to Metropolitan Opera Company (hereinafter referred to as the Opera Company), a corporation organized under the laws of the State of New York. Under the terms of said lease and agreement, and in consideration of the letting of the property referred to therein, the Opera Company covenanted and agreed to reserve for the use of the [fol. 46] Metropolitan Company or such persons as it might designate at every representation of grand opera given during the term of said lease all of the boxes situated on the Parterre tier of the said Opera House; that "six free admissions shall be allowed for each of the parterre boxes reserved as aforesaid"; to pay the Metropolitan Company a yearly rent or sum of $67,000; and to give a season of not less than sixty and not more than seventy regular representations of grand opera at the said Opera House in each year of the term of said lease. Under the terms of said lease and agreement the Metropolitan Company covenanted and agreed to pay to the Opera Company as a subsidy the sum of $1,000 for each of the regular per-

formances of grand opera to be given as provided therein. During all the times material to this action such subsidy amounted to $70,000 for each season, which was duly paid. The lease and agreement above referred to is attached to the petition of the claimant marked "Exhibit B," and is made a part hereof by reference.

IV

At all times material to this action the by-laws of the Metropolitan Company have contained and now contain the following provision:

"Article VII

"Section 4. Each holder or holders of 300 shares of stock shall have a license to use a designated box upon the parterre tier of the opera house. The license to use a box, above referred to, shall entitle the stockholder or stockholders, to whom such box is allotted, to occupy the box at all representations of grand opera, subject to such assessments and under such general rules and regulations as the board of directors may, from time to time, determine. No stockholder who is indebted to the company shall be allowed to use his box until such indebtedness is fully paid."

V

The stockholders of the Metropolitan Company entered into a further agreement, dated February 15, 1916, with the Metropolitan Company and with the Guaranty Trust Company of New York (Successor to the New York Guaranty and Indemnity Company), as trustee, providing among other things:

"First. Such of the stockholders of the company [i. e., the Metropolitan Company] as shall sign this agreement, each for himself and his or her representatives, executors, administrators, and assigns, severally agree with each other and with the company, that they will, from time to time, contribute to and for the use of the company such amounts of money in addition to the assessments provided for in said agrement of March 7, 1893 (not exceeding however the additional sum of five dollars for each share of stock in any one year), as the directors of the company may in their discretion see fit to call for."

Said agreement is attached to the petition of the claimant as "Exhibit C," and made a part hereof by reference.

[fol. 47] VI

The stockholders of the Metropolitan Company entered into an agreement, dated March 7, 1893, with the Metropolitan Company and with the New York Guaranty and Indemnity Company, as trustee. Said agreement provides among other things:

First. The stockholders, each for himself and his or her representatives, executors, administrators, and assigns, severally agree with each other, and with the company [i. e. the Metropolitan Company], that they will, from time to time, contribute to and for the use of the said company such amounts of money (not exceeding $10 for each share of stock in any one year) as the directors of the said company may in their discretion see fit to call for."

Said agreement is attached to the petition of the claimant as "Exhibit D," and is made a part hereof by reference.

VII

On or about March 28, 1905, the plaintiff became the owner and holder of 300 shares of the capital stock of the Metropolitan Company, and thereby acquired a license to use the box numbered 15 upon the parterre tier of the said opera house. At all times thereafter the plaintiff continued to own and now owns said shares of stock and the license to use said box.

VIII

Pursuant to the provisions of the by-laws set forth in proposition 5 above, and to the rules and regulations of the board of directors of the Metropolitan Company, the plaintiff duly signed and became a party to each of said agreements, Exhibit C and Exhibit D. In each and every year during which the plaintiff has held said stock in the Metropolitan Company she has duly paid the annual assessment called for by the directors of the Metropolitan Company and has been allowed to use said box; in November, 1919, the directors called for an assessment of $3,000, which she duly paid. The Metropolitan Company has never realized any annual profit, and has never distributed any profits to its stockholders.

IX

In consideration of the sum of $9,525 the plaintiff transferred the license to use said box for 47 performances during the grand opera season extending from November, 1919, to April, 1920, both inclusive, for a consideration computed as follows:

1 Opening night performance	$550
11 Monday night performances, at $275 each	3,025
11 Monday night performances, at $200 each	2,200
23 Friday night performances, at $150 each	3,450
1 "Prince of Wales" performance, November 18, 1919	,300
47	9,525

[fol. 48]

X

Prior to the opening of said opera season six tickets of admission to the parterre box of the plaintiff were issued to her for each per-

formance during the opera season. The plaintiff employed an agent to sell and dispose of the said tickets for her; said agent sold said tickets, which gave the purchasers thereof the right to use said box for the performance for which the tickets were sold. The said agent submitted to the plaintiff the names of the persons to whom the tickets were sold, and she transferred to such persons the license to use said box in consideration of the amount for which she, through her agent, sold said tickets. The plaintiff paid to said agent a commission for his services.

XI

On or about December 30, 1919, the plaintiff without protest, made a return and paid tax thereon under the provisions of section 800(a), paragraph (5), of the revenue act of 1918, said return being based upon an admission price of $60 per performance.

XII

On or about August 4, 1919, the attorneys for the Metropolitan Company asked the Commissioner of Internal Revenue for a ruling with respect to the application of section 800(a) of the revenue act of 1918 to transactions such as are set forth above. Under date of December 24, 1919, the Commissioner of Internal Revenue ruled as follows (p. 59):

"And stockholder of the Metropolitan Opera and Real Estate Company selling a ticket for admission to any of the boxes in question, whether direct or through the opera house box office, is subject to the tax imposed by paragraph (3) of this section of the statute and must mark such ticket in accordance with article 51 of the enclosed regulations. The basis for computing this tax is the difference between the established price of the box seat in the second tier for that performance, as determined by article 17 of the enclosed regulations, and the price for which the ticket is sold."

The established price at which the boxes situated in the second tier, which is the tier above the parterre boxes in the said Opera House and known as the grand tier boxes, were sold for the performances at the box office to the general public was $60 for each performance.

XIII

The boxes described as the grand tier boxes, the price of which is fixed at the box office of the opera house at $60 per performance and which seat six persons, are uniform in size with the boxes of the stockholders known as the parterre boxes, which also seat six persons and are substantially similar thereto.

XIV

In compliance with said ruling the plaintiff on or about January 28, 1920, made a return to the collector of internal revenue for the

[fol. 49] second district of New York, setting forth said transactions, and the plaintiff paid to said collector of internal revenue the sum of $3,352.50, being a tax equivalent to 50 per centum of the excess of said sum of $9,525 over an amount equal to $60 for each of said 47 performances, said return being filed and said payment being made under protest and because of duress and in order to avoid the imposition of penalties. Thereafter, on October 23, 1920, the plaintiff presented to the Commissioner of Internal Revenue a claim for the refunding of said tax and alleged the same to have been erroneously or illegally collected. Said claim for refund was duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof. On or about May 27, 1921, the Commissioner of Internal Revenue rendered a decision on said claim and rejected the same, ruling that said alleged tax was payable under the provisions of paragraph (4) of Section 800 (a) of the revenue act of 1918.

Conclusion of Law

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is not entitled to recover, and that her petition must be and the same is hereby dismissed. Judgment is rendered against the claimant for the cost of printing the record in this cause, the amount thereof to be fixed by the clerk and to be by him collected according to law.

Opinion

Hay, Judge, delivered the opinion of the Court:

The plaintiff is the owner and holder of 300 shares of the capital stock of the Metropolitan Company, and thereby is entitled to a license to use box No. 15 upon the parterre tier of the Metropolitan Opera House.

On December 30, 1919, the plaintiff without protest made a return and paid tax thereon under the provisions of section 800 (a), paragraph (5) of the revenue act of 1918, said return being based upon an admission price of $60 per performance during the opera season extending from November, 1919, to April, 1920, both inclusive.

On December 24, 1919, the Commissioner of Internal Revenue made a ruling that any stockholder of the Metropolitan Company selling a ticket for admission to any of the boxes held by the stockholders of said company, whether the sale of tickets was direct or through the opera house box office, was subject to the tax imposed by paragraph (3) of section 800 (a) of the revenue act of 1918.

In compliance with that ruling the plaintiff on January 28, 1920, made a return to the collector of internal revenue for the second district of New York, setting forth that she had, in consideration of the sum of $9,525 sold tickets to her box in the said opera house for 47 performances during the grand opera season from November, 1919, to April, 1920, both inclusive; and the plaintiff paid to the said col-

lector the sum of $3,352.50, being a tax equivalent to 50 per centum of the excess of said sum of $9,525 over an amount equal to $60 for each of said 47 performances, said return being filed and said [fol. 50] payment being made under protest. Thereafter, on October 23, 1920, the plaintiff presented to the Commissioner of Internal Revenue a claim for the refunding of said tax and alleged that the same was erroneously or illegally collected. On May 27, 1921, the Commissioner of Internal Revenue rendered a decision on said claim and rejected the same. Whereupon the plaintiff brought this suit to recover from the United States the said sum of $3,352.50.

The decision of this case depends upon the construction which is to be placed upon paragraph (3) of section 800 (a) of the revenue act of 1918, taken in connection with paragraph (5) of the same section and act.

Paragraph (5) reads as follows:

"In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed by paragraph (1)), a tax equivalent to 10 per centum of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder, such tax to be paid by the lessee or holder."

Under this paragraph the plaintiff made a return and paid the tax. In making said return she fixed the price of the box which she holds at $60, which was equivalent to $10 for each ticket sold for said box, it appearing that six tickets for said box for each performance are issued to the holder of the box, prior to the opening of the opera season. The plaintiff in this case employed an agent to sell and dispose of the said tickets for her. The agent sold the tickets, and after deducting his commission for his services turned over the proceeds of said sales to the plaintiff. The taxes were paid by the plaintiff without protest, and she does not now make any claim for the refund of the taxes paid by her under paragraph (5).

Paragraph (3) of section (800) (a) of the revenue act of 1918 reads as follows:

(3) Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at not to exceed 50 cents in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1), a tax equivalent to 5 per cent of the amount of such excess; and if sold for more than 50 cents in excess of the sum of such established price plus the amount of any tax imposed under paragraph (1), a tax equivalent to 50 per cent of the whole amount of such excess, such taxes to be returned and paid, in the manner provided in section 903, by the person selling such tickets.

It will be observed that under this paragraph the tax is imposed on the persons selling the tickets.

The tax is imposed upon persons who sell tickets at news stands, hotels, and places other than the ticket offices of theaters, operas, or other places of amusement. From the wording of the statute, then, it makes no differences where the tickets are sold by the person selling them. It is enough if they are sold, and it can not be said that in order to be subject to the tax the person selling them must sell them at news stands, hotels, and places of like character. [fol. 51] If that were so the intent and purposes of the act would be defeated and the payment of the tax could very easily be evaded.

Manifestly it was the intent and purpose of Congress that if tickets were sold for more than 50 cents in excess of the established price, plus the amount of the tax imposed under paragraph (1), a tax equivalent to 50 per centum of the whole amount of such excess should be imposed. Such tax was not confined to tickets sold at news stands, hotels, and similar places, but was to apply to all sales of tickets and to all persons selling them wherever sold. The plaintiff is not exempt from the tax imposed by paragraph (3) unless she can demonstrate that the tickets sold by her are not included in the provisions of that paragraph.

The plaintiff in order to do this contends that having paid the tax imposed by paragraph (5) she is exempt from paying the tax imposed by paragraph (3), no matter at what price she may have sold the tickets for her box.

When Congress enacted paragraph (5) of the statute the evident purpose was to reach by a larger tax persons who were able to have the permanent use of boxes in an opera house, or who had a lease for such boxes. It was not assumed that such persons would sell tickets for these boxes, or if it was, Congress might well have considered that paragraph (3) would apply as well to such persons as to other sellers of tickets. There is nothing in paragraph (5) which of itself exempts the holders of boxes from the provisions of paragraph (3).

The plaintiff lays much stress upon the alleged fact that there was no established price for the tickets sold by her, and argues that if there was no established price for said tickets she does not come under the provisions of paragraph (3); that an established price for said tickets must be shown to exist, or to be in effect at the time of the sale, before the tax can be imposed.

The Government in ascertaining the tax for which the plaintiff was liable under paragraph (5) fixed the price of the box of the plaintiff at $60 or $10 for each ticket. She paid this tax without protest and thereby acquiesced in and agreed that $60 was the price of the box for purposes of taxation under paragraph (5). If, then, $60 was the price which was recognized both by the plaintiff and the Government as being the price established for purposes of taxation under paragraph (5) it necessarily became the established price upon which to base the tax imposed by paragraph (3) if plaintiff was liable for said last-named tax, as any person would be who sold

tickets for more than 50 cents in excess of the sum of the established price.

It seems to be the contention of the plaintiff that a price must be established by some person having the power of establishment. Who other than the plaintiff had the power to establish the price of a box, or seats in a box, over which she had absolute control? And so when it came to establishing a price for her box for purposes of taxation she acquiesced in the price.

It is true that she sold her box for the 47 performances for a price which was far in excess of the $60. But because she established one price at one time and another price at another time, can she thereby be relieved of taxation by alleging that there was no established price as required by the statute? If so, then the statute is nugatory, not only as to the plaintiff but as to all others who [fol. 52] might have it in their power to establish prices for tickets at first one price and then another.

The statute must be construed in the light of reason and common sense, and it is not perceived why the plaintiff should be exempted from the tax imposed by paragraph (3). She sold the tickets and obtained for them more than 50 cents in excess of the sum of the established price. The intent and purpose of Congress was to impose a tax in just such a case, and the fact that the plaintiff paid another and a different tax upon a box which she owned can not excuse her from paying the tax. Nor does it seem a great hardship even if the $3,000 assessment paid by her is taken into consideration, for after paying the assessment on her shares of stock and the tax she has still something over $3,000 as the result of her ticket sales.

These being the views of the majority of the court the petition of the plaintiff must be dismissed. It is so ordered.

[fol. 53] VI. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the fifth day of May, A. D., 1924, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendant, and do order and adjudge that the plaintiff, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed: And it is further ordered and adjudged that the United States shall have and recover of and from the plaintiff, as aforesaid, the sum of Thirty-four dollars and seventy-six cents ($34.76), the cost of printing the record in this court, to be collected by the Clerk, as provided by law.

By the Court.

VII. Plaintiff's Application for Appeal—Filed June 20, 1924

From the judgment rendered in the above-entitled cause on the 5th day of May, 1924, in favor of the defendant, claimant, by her attorneys, on the 20th day of June, 1924, makes application for and gives notice of an appeal to the Supreme Court of the United States.

Rushmore, Bisbee & Stern, by Charles P. Howland, Attorneys for Claimant.

VIII. Order of Court Allowing Plaintiff's Application for Appeal

On this 23d day of June, 1924, it is ordered by the Court that the plaintiff's application for appeal be and the same is allowed.

[fol. 54] Court of Claims of the United States

[Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the Court by Hay, J.; of the judgment of the Court; of the plaintiff's application for an appeal and of the order of the Court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this twenty-fifth day of June, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal Court of Claims.)

Endorsed on cover: File No. 30,460. Court of Claims. Term No. 495. Georgine Iselin, appellant, vs. The United States. Filed July 1st, 1924. File No. 30,460.